

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer  
Marshall Johnson  
Ken Nickolai  
Phyllis A. Reha  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Claims by Sherburne County Rural Telephone Company, Integra Telecom of Minnesota, Sleepy Eye Telephone Company, TDS-Arvig Telephone Company, Bridge Water Telephone Company, East Otter Tail Telephone Company, Hutchinson Telephone Company, Lakedale Telephone Company, Mankato Citizens Telephone Company, Mid-Communications, Frontier Communications of Minnesota to Rural Exemption Pursuant to Section 251(f)(1) of the Act

ISSUE DATE: October 27, 2003

DOCKET NO. P-402,404,408,405,412,5643, 413,414,416,428,427,5096/IC-03-1559

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On September 2, 2003, Qwest Communications Corporation (QCC) filed an application for an amended certificate of authority to provide facilities-based and resold local services in exchanges served by 12 incumbent local exchange carriers (ILECs). The matter was assigned to Docket No. P-5096/M-0301401. Specifically, the ILECs are:

Sherburne County Rural Telephone Company  
Sleepy Eye Telephone Company  
Bridge Water Telephone Company  
Hutchinson Telephone Company  
Mankato Citizens Telephone Company  
Frontier Communications of Minnesota

Integra Telecom of Minnesota  
TDS-Arvig Telephone Company  
East Otter Tail Telephone Company  
Lakedale Telephone Company  
Mid-Communications  
Sprint Communications

On September 19, 2003, QCC filed a clarification of its application stating that it “has requested and has initiated the negotiation of interconnection agreements with the incumbents in the territories it is seeking to serve.”

On September 29, 2003, ten of the ILECs listed above (all but Frontier and Sprint) filed a notice of claim to rural exemption pursuant to Minn. Rules § 7811.2000, subp. 2 and Frontier filed a similar claim on September 30, 2003. The current docket (P-402, 404, 408, 405, 412, 5643, 413, 414, 416, 428, 427, 5096/IC-03-1559) was opened to consider these claims.

On October 6, 2003, the Commission issued a request for comments.

On October 20, 2003, comments were filed by the Minnesota Department of Commerce (the Department), Frontier Communications of Minnesota (Frontier) and QCC. In its comments, QCC questioned whether each of the ILECs that have raised the rural exemption is in fact entitled to the exemption. QCC asked the Commission to carefully scrutinize the rural exemption claims of the ILECs and allow appropriate interconnection agreements to be reached between QCC and the ILECs.

The Commission met on October 23, 2003 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. JURISDICTION AND REFERRAL FOR CONTESTED CASE PROCEEDINGS**

The Commission has jurisdiction over the matter per the following analysis.

Section 251(c) of the Telecommunications Act of 1996 (the Act) requires ILECs to (i) negotiate with CLECs in good faith, (ii) provide interconnection, (iii) provide unbundled access to services and elements, (iv) offer services for resale at wholesale rates, (v) provide notice of facility and network changes, and (vi) provide collocation. The Act also provides that rural LECs are exempt from these obligations under certain conditions. Section 251(f)(1)(A) states:

Subsection (c) of this section shall not apply to a rural telephone company until (i) such company as received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

QCC, acting as a CLEC in these circumstances, has requested interconnection with the named ILECs. All the named ILECs except Sprint have claimed to be rural LECs, and hence exempt from the interconnection requirements of the Act, pursuant to Section 251(f)(1)(A).

Upon the filing of a bona fide request by a CLEC to a rural telephone company for interconnection, the Act authorizes and directs state commissions to determine whether the rural telephone company's status as exempt from interconnection obligations shall continue or be terminated. Section 251(f)(1)(B) of the Act addresses the termination of exemptions by state commissions, stating in part:

The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

The Commission's responsibility and jurisdiction in this matter, therefore, is firmly established.

The Commission finds that it cannot satisfactorily resolve all questions regarding the issues raised by the parties in this matter on the basis of the parties' filings and oral arguments. In addition, the parties filing comments have recommended that the matter be referred to the Office of Administrative Hearings. In these circumstances, the Commission will refer the matter to the Office of Administrative Hearings for contested case proceedings.

### **II. ISSUES TO BE ADDRESSED**

Parties shall address the following issues in the course of the contested case proceedings ordered herein:

- 1) whether QCC has made a bona fide request for interconnection, services, or network elements within the meaning of Section 251(f)(1)(A);
- 2) whether QCC's request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof);
- 3) whether in light of the applicable law and facts, the exemption claimed by the identified ILECs should be terminated.

The Administrative Law Judge (ALJ) assigned to this matter is requested to make findings and recommendations regarding these issues and other related issues raised by the parties.

### **III. PROCEDURAL OUTLINE**

#### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; 612/341-7609.

#### **B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents. Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Kevin O'Grady, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 7<sup>th</sup> Place East,

Suite 350, St. Paul, Minnesota 55101-2147, (651) 282-2151; or Steve Alpert, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-3258.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are Sherburne County Rural Telephone Company, Integra Telecom of Minnesota, Sleepy Eye Telephone Company, TDS-Arvig Telephone Company, Bridge Water Telephone Company, East Otter Tail Telephone Company, Hutchinson Telephone Company, Lakedale Telephone Company, Mankato Citizens Telephone Company, Mid-Communications, Frontier Communications of Minnesota, QCC, and the Department. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

### **D. Prehearing Conference**

A prehearing conference will be held in this case on Monday, November 3, 2003, at 9:30 a.m. in the Large Hearing Room, Public Utilities Commission, 121-7th Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

#### **E. Time Constraints**

Due to a statutory deadline imposed for Commission action this matter, the Commission respectfully asks the Office of Administrative Hearings to conduct the contested case proceedings and file his report and recommendations in this matter by January 30, 2004.

#### **IV. APPLICATION OF ETHICS IN GOVERNMENT ACT**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to cases involving rate setting, among others. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

#### **V. EX PARTE COMMUNICATIONS**

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

#### **ORDER**

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. A preferring conference shall be held on Monday, November 3, 2003 at 9:30 a.m. in the Large Hearing Room, Public Utilities Commission, 121-7th Place East, Suite 350, St. Paul, Minnesota 55101.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of Claims by Sherburne County      MPUC Docket No. P-402, 404, 408, 405, 412,  
Rural Telephone Company, Integra Telecom of      5643, 413,414, 416,428, 427, 5096/ IC-03-1559  
Minnesota, Sleepy Eye Telephone Company,  
TDS-Arvig Telephone Company, Bridge Water      OAH Docket No.  
Telephone Company, East Otter Tail Telephone  
Company, Hutchinson Telephone Company,  
Lakedale Telephone Company, Mankato  
Citizens Telephone Company, Mid-  
Communications, Frontier Communications of  
Minnesota to Rural Exemption Pursuant to  
Section 251(f)(1) of the Act

**NOTICE OF APPEARANCE**

Name, Address and Telephone Number of Administrative Law Judge:

Allan W. Klein, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401; (612) 341-7609

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_